

identify and locate the requested records. With respect to records maintained in computerized form, a search for a record includes services functionally analogous to searches for records which are maintained in a conventional form. However, Customs personnel are not required to tabulate or compile information for the purpose of creating a record. Only records in existence at the time of the receipt of the request will be treated as falling within the scope of the request and no request for the continuing production of documents created after receipt of the request will be honored.

(h) *“Request for record” defined.* For purposes of uniformity in record-keeping a “request for a record” is defined as a written request for a record of the U.S. Customs Service which has not been published in the FEDERAL REGISTER, the Customs Bulletin, by press release, or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the request makes reference to the Freedom of Information Act, as amended (5 U.S.C. 552).

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91-77, 56 FR 46114, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations—*(1) *Service ports.* The appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge (SAC), shall make any initial determination of a request for a record which is maintained, respectively, at that service port or under the SAC’s jurisdiction.

(2) *Headquarters.* For records located at Customs Service Headquarters, the initial determination to grant or deny a request shall be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. In the event the request relates to records which are maintained in an office which is not within a division, the initial determination shall be made

by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office.

(b) *Time limit for initial determinations.* The time limit for making an initial determination to grant or deny a request for records, including the time for notifying the requester of that determination, is 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request (see § 103.5(f)), unless the designated officer invokes an extension pursuant to § 103.8(a) or the requester otherwise agrees to an extension.

(c) *Grant of request.* If the appropriate Customs officer grants a request, and if the requester wants a copy of the requested records, that officer shall mail a copy of those records to the requester together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. If a requester wants to inspect the record, the appropriate Customs officer who grants the request shall send written notice to the requester stating the time and place of inspection and the amount of any fee involved in the request. In such a case, the appropriate Customs officer shall make the record available for inspection at the time and place stated, but in a manner so as not to interfere with its use by the United States Customs Service or to exclude other persons from making an inspection. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The requester is not allowed to remove a record from the inspection room. If, after making inspection, the requester wants a copy of all or a portion of the requested record, the appropriate Customs officer shall supply the desired copy upon payment of the established fee prescribed in § 103.10.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notification shall contain (1) the physical location of the requested records, (2) the applicable exemption(s) and reason for not granting the request, (3) the name and title or position of the Customs officer

who denied the request, (4) advice on the right to administrative appeal in accordance with § 103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot be located and evaluated within the initial 10-day period or the extension period allowed under § 103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records. However, that officer shall also notify the requester of the facts and inform the requester that he or she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 96-36, 61 FR 19838, May 3, 1996]

§ 103.7 Administrative appeal of initial determination.

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the FOIA Appeals Officer at Headquarters, within 35 days after the date of notification described in § 103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Form of appeal.* The Administrative appeal shall:

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words "Freedom of Information Act Appeal";

(3) Reasonably describe, in accordance with § 103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the FOIA Appeals Officer at Headquarters, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. FOIA Appeals Officer at Headquarters, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The FOIA Appeals Officer shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the FOIA Appeals Officer is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to § 103.8(a)), the FOIA Appeals Officer shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in § 103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant's request.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 103.8 Time extensions.

(a) *Ten-day extension.* In unusual circumstances, the Customs officer who is